

COMMISSIONER'S DIRECTIVE #21

January 2004

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SUBJECT: Streamlined Sales Tax Agreement Provisions

I. INTRODUCTION

In March 2000, a collection of states joined forces to sponsor a national sales tax initiative—the Streamlined Sales Tax Project (“SSTP”). The SSTP represents an effort on the part of its member states to “simplify and modernize sales and use tax collection and administration.” To that end, the Streamlined Sales Tax Implementing States (“SSTIS”) crafted model legislation—i.e., the Streamlined Sales and Use Tax Agreement. Member states were encouraged to adopt legislation conforming to this model. Effective January 1, 2004, Indiana has enacted legislation to bring Indiana's sales and use tax statutes into conformity with this model legislation.

Temporary regulations have been adopted and are available in the Indiana Register for December 2003. The Department has also updated Sales Tax Information Bulletin #29 to reflect the changes to the definitions of food, candy, soft drinks, alcoholic beverages, and dietary supplements and the application of sales tax to these items.

II. SALES TAX AMENDMENTS

IC 6-2.5-1-5 (amended). “Gross retail income” defined.

- Provides that delivery and installation charges are included in gross retail income.

- Provides that coupons or other discounts allowed that are not reimbursed by a third party are not part of gross retail income.

IC 6-2.5-1-11 (added). "Alcoholic beverages" defined.

- Defines an alcoholic beverage as a beverage that contains one-half of one percent (0.5%) or more of alcohol by volume.

IC 6-2.5-1-12 (added). "Candy" defined.

- Defines candy to be a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts or other ingredients or flavorings in the form of bars, drops, or pieces.
- The term does not include items containing flour or items requiring refrigeration.

IC 6-2.5-1-13; IC 6-2.5-1-14; AND IC 6-2.5-1-15; (added). "Computer," "Computer software," and "Electronically" defined.

- Defines the terms computer, computer software, and delivered electronically.

IC 6-2.5-1-16 (added). "Dietary supplement" defined.

- Defines a dietary supplement as a product that is intended to supplement the diet, contains a vitamin or other mineral, is intended for oral ingestion, and is required to be labeled as a dietary supplement, identifiable by the "Supplemental Facts" box found on the label as required under 21 CFR 101.36.

IC 6-2.5-1-17 (added). "Drug" defined.

- Defines a drug as a substance recognized in the official United States Pharmacopoeia, intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease.
- The term does not include food and food ingredients, dietary supplements, or alcoholic beverages.

IC 6-2.5-1-18 (added). "Durable medical equipment" defined.

- Defines durable medical equipment to mean equipment including repair and replacement parts for equipment that can stand repeated use, is used to serve a medical purpose, generally is not useful to a person in the absence of illness or injury, and is not worn in or on the body.

IC 6-2.5-1-19 (added). "Electronic" defined.

- Defines electronic as relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

IC 6-2.5-1-20 (added). "Food and food ingredients" defined.

- Defines food and food ingredients as substances sold for ingestion or chewing by humans, that are consumed for their taste or nutritional value.
- The term does not include alcoholic beverages, candy, dietary supplements, or soft drinks.

IC 6-2.5-1-21 (added). "Lease" or "rental" defined.

- Defines the terms "lease" and "rental" as any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration.
- The term does not include any arrangement whereby title to property subject to a security agreement automatically transfers upon the completion of payments or when title can be gained by the payment of an option price of less the \$100 or 1% of the total payments.
- The term also does not include providing tangible personal property along with an operator for a fixed or indeterminate period if the operator is necessary for the equipment to perform as designed and the operator does more than maintain, inspect, or set up the tangible personal property.
- How a transaction is characterized by the Internal Revenue Code, the uniform commercial code, or any other federal, state, or local laws is not a consideration in determining whether an arrangement is a lease.

IC 6-2.5-1-22 (added). "Mobility enhancing equipment" defined.

- Defines mobility enhancing equipment as equipment primarily used to provide or increase the ability to move from one place to another and is not generally used by persons with normal mobility. It does not include a motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.

IC 6-2.5-1-23 (added). "Prescription" defined.

- Defines a prescription as an order or formula issued by a licensed practitioner.

IC 6-2.5-1-24 (added). "Prewritten computer software" defined.

- Defines prewritten computer software to mean computer software that is not designed and developed by the author or other creator to the specifications of a specific purchaser.
- Modifications to prewritten computer software where there is a reasonably separately stated charge for modification or enhancement, the modification or enhancement is not prewritten computer software.
- Consistent with existing Department policy concerning the taxation of “canned” and “customized” software.

IC 6-2.5-1-25 (added). “Prosthetic device” defined.

- Defines a prosthetic device as a replacement, corrective, or supportive device worn on or in the body to artificially replace a missing part of the body, prevent or correct physical deformity, or support a weak or deformed part of the body.

IC 6-2.5-1-26 (added). “Soft drinks” defined.

- Defines soft drinks as nonalcoholic beverages that contain natural or artificial sweeteners.
- The term does not include beverages that contain milk or milk products, soy, rice, or similar milk substitutes, or greater than fifty percent (50%) of vegetable or fruit juice by volume.

IC 6-2.5-1-27 (added). “Tangible personal property” defined.

- Defines tangible personal property as something that can be seen, weighed, measured, felt, or touched or in any other manner is perceptible to the senses. The term includes electricity, gas, water, steam, and prewritten computer software.

IC 6-2.5-4-1 (amended). “Selling at retail” defined.

- Includes delivery charges in gross retail income and charges by the seller for the preparation and delivery of the property to a location designated by the purchaser, including but not limited to transportation, shipping, postage, handling, crating, and packing.

IC 6-2.5-4-10 (amended). “Rental or leasing of personal property.”

- Provides that subleasing is not classified as the rental or leasing of tangible personal property.

IC 6-2.5-5-1 (amended). “Agricultural exemption.”

- Provides an agricultural exemption for the production of “food and food ingredients.”

IC 6-2.5-5-2 (amended). “Agricultural machinery, tools, and equipment” exemption.

- Provides an agricultural machinery, tools, and equipment exemption for the production of “food and food ingredients.”

IC 6-2.5-5-18 (amended). “Medical equipment, supplies, and devices” exemption.

- Clarifies that the purchase of durable medical equipment and prosthetic devices are exempt from the sales tax, as well as the rental of durable medical equipment and other medical supplies.

IC 6-2.5-5-19 (amended). “Drug” exemption.

- Provides a technical change to the exemption for legend and non-legend drugs.

IC 6-2.5-5-20 (amended). “Food for human consumption” exemption.

- Provides that food and food items are exempt from the sales tax if items are sold without eating utensils provided by the seller and are sold by a seller whose primary NAICS classification is food manufacturing, except for bakeries.
- Food sold in an unheated state by weight or volume as a single item, or bakery items including bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, Danish, cakes, tortes, pies, tarts, muffins, bars, cookies, and tortillas are also exempt.
- Items that are taxable include, (1) candy, (2) alcoholic beverages, (3) soft drinks, (4) food sold through a vending machine, (5) food sold in a heated state or heated by the seller, (6) two or more food ingredients mixed or combined by the seller for sale as a single item, and (7) food sold with eating utensils provided by the seller.

IC 6-2.5-5-21 (amended). “Food; medically necessary deliveries or purchases” exemption.

- Provides an exemption for transactions involving the sales of “food and food ingredients.” See IC 6-2.5-1-20.

IC 6-2.5-5-21.5 (amended). “Medically necessary food” exemption.

- Provides an exemption for transactions involving the sales of “food and food ingredients.” See IC 6-2.5-1-20.

IC 6-2.5-5-22 (amended). "School meals" exemption.

- Provides an exemption for transactions involving the sales of "food and food ingredients." See IC 6-2.5-1-20.

IC 6-2.5-5-35 (amended). "Tangible personal property transaction" exemption.

- Provides an exemption for transactions involving the sales of "food and food ingredients." See IC 6-2.5-1-20.

IC 6-2.5-6-9 (amended). "Uncollectible receivables" deduction.

- Makes changes in the bad debt deduction for sales tax so that any deduction taken does not include interest and the amount of the deduction shall be determined in the manner provided in Section 166 of the Internal Revenue Code.
- The deduction excludes financing charges or interest, sales or use taxes charged on the purchase price, uncollectible amounts on property that remain in the possession of the seller until the full purchase price is paid, expenses incurred in attempting to collect any bad debt, and the value of repossessed property.
- The deduction is claimed during the period for which the receivable is written off. A claimant who is not required to file a federal income tax return may deduct an uncollectible receivable on a return filed for the period in which the receivable is written off in the claimant's records.
- Provides that if the amount of the deduction exceeds the retail merchant's tax liability for the reporting period, the merchant may file a refund claim under IC 6-8.1-9.
- For purposes of reporting a payment received on an uncollectible receivable, any payments made shall be applied proportionally to the taxable price of the property and the sales tax thereon, then to interest, service charges, and any other charges.

A NEW chapter, IC 6-2.5-12, "Taxing Situs of Nonmobile Telecommunications Service" is ADDED.

IC 6-2.5-12-10 (added). "Post paid calling service" defined.

- Defines post paid calling service as payment on a call by call basis through the use of a credit card, debit card, or by charge made to a telephone number that is not associated with the origination or termination of the telecommunications service.

IC 6-2.5-12-11 (added). "Prepaid calling service" defined.

- Defines prepaid calling service as the right to access telecommunications services, which must be paid for in advance, and with the use of an access number and that is sold in predetermined units or dollars.

IC 6-2.5-12-14 (added). "Telecommunications sourcing rules."

- Provides that services sold on a call-by-call basis shall be sourced to each level of jurisdiction where the call either originates or terminates, and in which the service address is located.
- Sales of mobile telecommunications are sourced to the customer's primary place of primary use as required by the Mobile Telecommunications Sourcing Act.
- Post paid calling services are sourced to the origination point of the telecommunications signal as first identified by the seller's telecommunications system, or information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.
- Prepaid calling services are sourced in the following manner. When the services are received by the purchaser at a business location of the seller, the sale is sourced to the business location. If it is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser occurs.

IC 6-2.5-4-6 imposes sales tax on "intrastate" telecommunications. With regard to non-mobile telecommunications services, sales tax is not imposed on interstate telecommunications services even though those transactions could be sourced to Indiana pursuant to IC 6-2.5-12. All mobile telecommunications services that are sourced to Indiana pursuant to IC 6-8.1-15 are subject to sales tax.

A NEW chapter, IC 6-2.5-13, "General Sourcing Rules" is ADDED.

IC 6-2.5-13-1 (added). "Definitions; scope, sourcing rules"

- Provides sourcing rules for general personal property and services excluding motor vehicles, trailers, aircraft, watercraft, modular homes, mobile homes, manufactured homes, or telecommunications services.
- The retail sale, except for the lease or rental of a product shall be sourced in the following ways: A sale shall be sourced to the business location of the seller when received by the purchaser at the business location. If the item is received by the purchaser at a location other than that of the seller, the sale is sourced to the location received by the purchaser. If the first two provisions do not apply, the

sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller. If none of the previous provisions apply, the location will be determined by the address from which the property was shipped.

- The lease or rental of property other than motor vehicles, trailers, semi-trailers, aircraft, or property used in transportation that requires recurring periodic payments will be sourced in the following manner: The first payment is sourced the same as a retail transaction. Subsequent payments are sourced to the location of the property. The lease or rental of motor vehicles, trailers, semi-trailers, or aircraft is sourced to the primary location of the property. The retail sale or lease or rental of transportation equipment shall be sourced the same as a retail sale.

IC 6-2.5-13-2 (added). "Multiple Points of Use" exemption form.

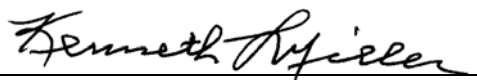
- Provides for a multiple point of use ("MPU") exemption for a business purchaser that knows at the time of purchase that a digital good, computer software delivered electronically or for service that will concurrently be available for use in more than one jurisdiction.
- Presentation of the MPU exemption relieves the seller from all obligations to collect the sales tax from the purchaser. The purchaser is allowed to use any consistent and uniform apportionment method.

IC 6-2.5-13-3 (added). "Direct mail purchases."

- Provides that a direct mailer must provide the seller with a direct mail form, or information to show the jurisdictions to which the direct mail is delivered to recipients. Upon the receipt of the direct mail form, the seller is not obligated to collect the applicable tax, and the purchaser is obligated to remit the applicable tax on a direct pay basis. If the purchaser provides information to the seller of the jurisdictions to which the direct mail is delivered, the seller is required to collect the tax according to the delivery information provided by the purchaser.

IC 6-9-12-3; IC 6-9-20-4; IC 6-9-21-4; IC 6-9-23-4; IC 6-9-14-4; IC 6-9-25-4; IC 6-9-26-7; IC 6-9-27-4; IC 6-9-33-4 (amended).

- Amends the Food and Beverage Tax statutes so that the definition of food sold on a "To Go" or "Take Out" basis corresponds to provisions in the new sales tax statutes.



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Commissioner